



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

R. Douglas Meckes, DVM
State Veterinarian

June 17, 2019

Amanda Lilly
Business Licensing Specialist
PetSmart, Inc.
19601 N. 27th Avenue
Phoenix, AZ 85207

NOTICE of CIVIL PENALTY and NOTICE OF WARNING

Re: CIVIL PENALTY ASSESSMENT FOR VIOLATION of TITLE 02 N.C. ADMINISTRATIVE CODE CHAPTER 52J SECTION and .0210(c).

AWS-CP-2019-10

Facilities: PetSmart #2124 store
License No. 10919

Dear Amanda Lilly:

Pursuant to NCGS § 19A-40, I am issuing this notice that PetSmart, Inc is hereby assessed a civil penalty of \$500.00 as provided in the enclosed Notice of Violation.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing with the N.C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to NCGS § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may contact me by telephone at (919) 707-3280. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

PAYMENT

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Dr. Patricia Norris
Director, Animal Welfare Section
1030 Mail Service Center
Raleigh, NC 27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by NCGS § 150B-23. The petition must be filed with the N.C. Office of Administrative Hearings ("OAH") within 60 days from the date of this document. Additionally, the petition must be accompanied by a filing fee of twenty dollars (\$20.00). Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone at 919-431-3000.

You must serve NCDA&CS by mailing a copy of the petition to:

Ms. Tina Hlabse
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia Norris", written over a horizontal line.

Patricia Norris, DVM, MS
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: R. Douglas Meckes, DVM, State Veterinarian
Tina Hlabse, General Counsel, NCDA&CS
Joe Reardon, Assistant Commissioner, NCDA&CS
Christopher R. McLennan, Assistant Attorney General

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT
OF AGRICULTURE AND CONSUMER
SERVICES, VETERINARY DIVISION
ANIMAL WELFARE SECTION

IN THE MATTER OF

PETSMART, INC.
PETSMART #2124 STORE

) NOTICE OF VIOLATION and
) ASSESSMENT OF CIVIL PENALTY
) FOR VIOLATION OF 02 N.C.
) ADMINISTRATIVE CODE ("NCAC")
) CHAPTER 52J SECTION .0210(c); and
) NOTICE OF WARNING FOR VIOLATION
) OF 52J .0201(j)

Acting pursuant to NCGS § 19A-40, Dr. Patricia Norris, Director, Animal Welfare Section ("AWS"), North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") makes the following:

FINDINGS OF FACT

1. At all times pertinent to this matter, PetSmart #2124 store located at 206 S Sharon Amity Road ("the kennel") operated by PetSmart, Inc. was a boarding kennel, registered pursuant to NCGS § 19A-28.
2. On May 17, 2019, AWS received a complaint concerning the care provided by the kennel to a dog named Beethoven. On May 20, 2019, AWS Animal Health Technician Jay Blatche ("Inspector Blatche") attempted to conduct a site visit and inspection of the kennel and to speak with staff of the kennel as part of the investigation into this complaint.
 - a. The General Manager on the premises informed Inspector Blatche that she needed to contact the corporate office and asked him to wait;
 - b. The General Manager informed Inspector Blatche that the corporate office was advising her to direct the Inspector to leave the premises without inspecting or conducting the investigation;
 - c. Upon follow-up by AWS, the corporate office expressed an intent to fully allow AWS Inspectors access to conduct their investigation.
3. On June 4, 2019, Inspector Blatche returned to the kennel to resume the complaint investigation. Inspector discovered that:
 - a. Beethoven arrived at the kennel on May 11, 2019 with no visible lesions or discomfort.
 - b. Beethoven boarded at the kennel from May 11 – 15, 2019. The kennel staff walked the dog twice daily.
 - c. Beethoven's owner picked him up at approximately 11:00 AM on May 15, 2019. She immediately noticed that Beethoven's scrotum was inflamed. She showed the condition to the kennel staff at the front desk.
 - d. The kennel records do not document that any veterinary care was provided to Beethoven during his stay to alleviate the medical condition or its associated pain and discomfort.
 - e. Beethoven's owner took him immediately to the veterinary clinic located in the store. The medical records show that Beethoven was examined at 11:39 AM on May 15, 2019 for "raw genitals."
 - f. The veterinarian dispensed antibiotics and pain relievers to treat Beethoven's medical condition.

CONCLUSIONS

To the extent that the Findings of Fact contain Conclusion of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. Based on the findings of this investigation, AWS concludes that the kennel violated the following provisions:

02 NCAC 52J .0201(j) for failing to allow review or inspection of an area of the facility during normal business hours by the AWS Inspector on May 20, 2019; and

02 NCAC 52J .0210(c) for failing to provide veterinary care to a dog that developed a painful medical condition while in the care and custody of the kennel.

(See Appendix for text of referenced General Statutes and Administrative Code)

CIVIL PENALTIES

As required by NCGS § 19A-40, in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly, PetSmart, Inc. is hereby assessed a civil penalty for the following violations:

\$500.00 for violation of 02 NCAC 52J .0210(c) for failing to provide veterinary care to a dog that developed a painful injury while in the care and custody of the kennel.

\$500.00 TOTAL AMOUNT ASSESSED

NOTICE OF WARNING

The initial failure of the kennel to allow the Inspector access to review and inspect the facility during normal business hours was a violation of 02 NCAC 52J .0201(j). However, once AWS made the corporate office aware of the situation, the kennel subsequently allowed the inspection and cooperated with the investigation. Furthermore, PetSmart has indicated that, in the future, they will allow access to the facility and its records as required by the AWA and its associated regulations.

Pursuant to NCGS § 19A-30, this Notice of Warning serves as written notice indicting the respects in which the kennel has violated 02 NCAC 52J .0201(j).

Continued or future violation of the statutes or regulations referenced in this letter will be considered a willful disregard or violation of the N.C. Animal Welfare Act and the rules issued pursuant thereto. Such willful disregard or violation may result in action against your facility's license pursuant to NCGS § 19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under NCGS § 19A-40.

June 17, 2019
Date

Patricia Norris, DVM, MS
Patricia Norris, DVM, MS
Director, Animal Welfare Section
North Carolina Department of
Agriculture & Consumer Services

Appendix

REFERENCED LAWS AND REGULATIONS

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect. (1977, 2nd Sess., c. 1217, s. 11; 1987, c. 827, s. 67.)

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 6; 1998-215, s. 3.)

02 NCAC 52J .0201 GENERAL

(j) All areas of a facility are subject to review or inspection by North Carolina Department of Agriculture and Consumer Services employees during normal business hours (8:00 a.m. through 5:30 p.m. Monday through Friday).

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005.

02 NCAC 52J .0210 VETERINARY CARE

(c) Each dog and cat shall be observed daily by the animal caretaker in charge, or by someone under his direct supervision. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with veterinary care or be euthanized, provided that this shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If euthanasia is performed at a certified facility, a list of personnel approved to perform euthanasia shall be maintained in a Policy and Procedure Manual as described in 02 NCAC 52J .0800. Diseased or deformed animals shall be sold or adopted only under the policy set forth in the "Program of Veterinary Care." Full written disclosure of the medical condition of the animal shall be provided to the new owner.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. March 23, 2009; January 1, 2005.